IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Deepak Aaswani vs. R.S.R.T.C. & Ors.
(S.B.C. Writ Petition No. 1737/03)

Date of Order :- 15th December, 2006

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Harish Purohit, Advocate for the petitioner.
Mrs. Suman Porwal, Advocate for the respondent.

BY THE COURT :

The petitioner has challenged the award dated 24.9.2002 whereby the learned Labour Court has answered the reference made to it in regard to the validity of the order of his removal dated 12.2.1984 in the terms that the same was legal and valid and therefore he was not entitled to any benefits.

I have heard Mr. Harish Purohit, learned counsel for the petitioner and Mrs. Suman Porwal, learned counsel for the respondent and perused the record.

Learned counsel for the petitioner has argued that even though the learned Labour Court by its order dated 26.2.1999 held that the enquiry was not fair and thereafter the enquiry was held

afresh before it but it has not considered whether there was sufficient evidence to prove the charges against the petitioner. There was nothing on record to prove that 40 passengers were travelling without tickets when the vigilance party inspected the bus and the statement of Mohan Singh, who is Depot Manager does not prove these facts. The learned Labour Court was required to consider all the arguments. It should not have considered the previous record of the petitioner without notice to him. The impugned award is therefore liable to be rejected.

On the other hand, Mrs. Suman Porwal, learned counsel for the respondent argued that the award passed by the learned Tribunal does not suffer from any error apparent on the face of record and that even if the enquiry conducted by the respondents was held not to be fair, the charges against the petitioner were proved in an enquiry held before the learned Labour Court. It was proved that when the vigilance party inspected the bus on which the petitioner was on duty as a conductor, there were as many as 40 passengers who were not only travelling without tickets but from whom the petitioner has charged the fare as well. P.W. 2 Mohan Singh, who is Depot Manager has proved all the charges. In the past also, the petitioner had been found guilty of similar mis-conduct in

that on as many as three occasions in the past, penalties were imposed upon him. She therefore argued that the writ petition be dismissed.

Having considered the arguments of the respective parties and scanned the material on record , I find that the charges proved against the petitioner were grave enough so as to justify the penalty of removal. When the bus was inspected, there were 40 passengers who were travelling in the bus without tickets. An entry to this effect was made in the way bill. This has been proved by P.W. 2 Mohan Singh, who is Depot Manager. For this incident of corruption, a criminal case was also filed against him in which although he was convicted by the trial Court but was acquitted in appeal on the benefit of doubt being extended to him. Not only 40 passengers were found without tickets but the petitioner was found to have taken the fare from them but had not issued tickets to them. On the earlier occasions also, the petitioner was found to be indulging in similar delinquencies. Merely because the factom with regard to earlier mis-conduct of the petitioner was taken in to consideration by the learned Labour Court, that would not vitiate the order of removal which has been passed on the basis of his aforesaid stated mis-conduct.

On totality of the circumstances, I do not find any error in the impugned award of the learned Labour Court so as to constitute any error apparent on the face of record warranting interference by this Court. The writ petition is accordingly dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.